

Office of Chief Counsel  
Internal Revenue Service  
**memorandum**

CC:MSR:ILD:CHI:TL-N-4166-99  
JPJankowski

date: August 24, 1999

to: District Director, Illinois District  
Attn: John Mack, CEP Case Manager, Group 202

from: District Counsel, Illinois District

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subject: [REDACTED]  
**Request for Informal Advice and Assistance**

The purpose of this memorandum is to respond to your request for assistance with respect to your solicitation of one or more consents to extend the statute of limitations for the above-noted Large Case taxpayer. In a memorandum dated August 6, 1999, we sought the advice of the National Office on these same matters and on August 23, 1999, we received a reply. The informal advice we received is presented herein in result only.

In soliciting a consent (Form 872) for your taxpayer for any of the taxable years ended December 31, [REDACTED], December 31, [REDACTED] and/or December 31, [REDACTED], please identify the taxpayer as follows:

"[REDACTED],  
formerly [REDACTED], as agent for the [REDACTED]  
[REDACTED]  
consolidated group and as successor in interest to  
[REDACTED] \*"

At the bottom of page 1 of Form 872, next to a reciprocal to the above-noted asterisk, state:

"\* with respect to the consolidated tax liability of  
[REDACTED] for taxable  
periods ended on December 31, [REDACTED], December 31, [REDACTED]  
and December 31, [REDACTED]."

\* \* \* \* \*

Following your drafting of the above-noted consent(s), you will need to solicit an appropriate signature for the Form 872. You will need to have it signed by either the president, vice president, treasurer, assistant treasurer, chief accounting officer, or any other person associated with [REDACTED] [REDACTED], duly authorized to act whether or not that person was the same individual who signed the original [REDACTED] consolidated return. See I.R.C. § 6062.

### ISSUES PRESENTED

1. Whether under the facts and circumstances described herein, [REDACTED] as successor, may act as the surviving agent or successor agent for the former ("old") [REDACTED] consolidated group for the tax periods [REDACTED], [REDACTED] and [REDACTED]?

2. Determine, with appropriate language, the party with actual authority to bind the former [REDACTED] consolidated group for the tax periods [REDACTED], [REDACTED] and [REDACTED], for purposes of executing valid Forms 872.

### FACTS

For each of the tax periods ending December 31, [REDACTED], [REDACTED] and [REDACTED], [REDACTED] filed Consolidated Federal Corporate Income Tax Returns (Forms 1120) with and for a controlled group of subsidiaries. We understand that these same corporate income tax returns were timely filed and are the subject of previously secured agreements to extend the statute (Forms 872). The earliest expiration of a statute of limitations for these same periods will occur after December 31, [REDACTED].

[REDACTED] was a Delaware corporation. On or about [REDACTED] [REDACTED] entered into a formal Agreement and Plan of Merger (hereinafter the "Merger Agreement"). The third party participants involved with the [REDACTED] Merger Agreement are [REDACTED] and [REDACTED]. [REDACTED] is also a Delaware corporation.

[REDACTED] was incorporated on or about [REDACTED], as a direct subsidiary of [REDACTED] and is [REDACTED]

The Merger Agreement, as contemplated by the parties, planned for [REDACTED] and [REDACTED] to acquire [REDACTED] in a reorganization under the authority of I.R.C. Section 368(a). In order to effectuate the merger, as noted above, [REDACTED] created and used [REDACTED] as the merger vehicle. At the "Effective Time", (6:30p.m. on [REDACTED] pursuant to Delaware law, [REDACTED] exchanged [REDACTED] shares of its common stock and cash of \$[REDACTED] for each of the outstanding shares of [REDACTED]. Simultaneously, [REDACTED] merged into [REDACTED], with [REDACTED] as the surviving legal entity, and [REDACTED] changed its name to [REDACTED] [REDACTED]). A Certificate of Merger of "[REDACTED]" and Change of Name From [REDACTED] to [REDACTED] was filed with the State of Delaware, Secretary of State, on [REDACTED] at 9:50 AM.

## DISCUSSION

The question(s) presented herein relate to your need to identify the appropriate and proper party that can execute a consent to extend the statute of limitations and for receiving all subsequent 30-Day Letters or statutory notices of deficiency.

Under Temp. Treas. Reg. Section 1.1502-77T(a)(4)(ii), [REDACTED] is properly treated as an alternative agent of the [REDACTED] group because it is the successor to [REDACTED] in a transaction to which I.R.C. Section 381 (a) applies (i.e., a statutory merger). Accordingly, we reiterate and propose the following language be used on any Form(s) 872 for extending the statute of limitations on the [REDACTED] entity:

" [REDACTED] (EIN: [REDACTED],  
formerly [REDACTED], as agent for the [REDACTED]  
Corporation (EIN: [REDACTED]  
consolidated group and as successor in interest to  
[REDACTED] \*"

At the bottom of page 1 of Form 872, next to a reciprocal to the above-noted asterisk, state:

"\* with respect to the consolidated tax liability of

[REDACTED] for taxable periods ended on December 31, [REDACTED], December 31, [REDACTED] and December 31, [REDACTED]."

Once you complete an initial draft of the proposed Form 872, please forward a copy to us for a final review. During this process, please double check the assigned employer identification numbers and formal corporate names for the entities described above. Any discrepancies should be immediately brought to our attention.

Should you, or Mr. Blum have any questions with respect to these matters, please contact the undersigned at (312) 886-9225, Extension 319.

RICHARD A. WITKOWSKI  
District Counsel

By: JOHN P. JANKOWSKI  
Special Litigation Assistant

CC:  
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